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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

**SUMMONS FOR JUDGMENT NO.836 OF 2004**
IN
SUMMARY SUIT NO.2392 OF 2004

Bajaj Hindusthan Limited ... Plaintiff

V/s.

Jayantilal Khandwala & Sons
Pvt. Ltd. & Ors. ... Defendants

Mr.Virag Tulzapurkar with Mr.Snehal Shah and
Ms.Dipti Chaand for Plaintiff
Mr.Chirag Balsara with Mr.Vivek Kantawala i/b
M/s.Kantawala & Co. for Defendant Nos.1 and 3
Mr.P.Saxeria with S.Israni and V.Iyer for Defendant
No.2 and 4

CORAM: **SMT.NISHITA MHATRE, J.**

DATE: **APRIL 3, 2006**

**P.C.:**

. This Summons for Judgement has been taken out by the Plaintiff which claims a sum of Rs.2,99,04,684/- from the Defendants as the principal amount together with interest @15% per annum. The plaintiff had advanced an inter corporate deposit of Rs.3 crores in favour of Defendant No.1. A guarantee for the said amount was issued by Defendant Nos.2 and 3. Defendant No.4 had pledged 1021100 equity shares held by Defendant No.4 of a company called Khandwala Securities Limited listed on the Bombay Stock Exchange. Under the terms and conditions of the pledge agreement, Defendant No.4 agreed to pledge the securities the value of which at all times was approximately 150% of the outstanding deposit. In the event of any shortfall or any default

in payment on the part of the defendants, it was agreed that the plaintiff would be entitled to sell the pledged shares and appropriate the sale proceeds towards the repayment of inter corporate deposit. The pledgee under the agreement, that is the plaintiff herein, had the right to sell the pledged securities and apply the proceeds towards the outstanding deposit after deducting the expenses in respect of such sale.

2. The Plaintiff contends that the defendants failed and neglected to repay the inter corporate deposit on and after the date of maturity of the deposit i.e., on 31.12.2001. The Plaintiff was entitled to the principal amount of Rs.3 crores alongwith interest of Rs.8,93,047/-. It appears that two cheques drawn by Defendant No.1 for repayment of the deposit were dishonoured. The plaintiff called upon Defendant No.1 by several letters to repay the inter corporate deposit together with interest thereon. Having failed to do so, the plaintiff informed the defendants by its letter dated 22.9.2003 that if the outstanding sum of Rs.3,91,30,241/- together with accrued interest was not repaid within four days from that date, the plaintiff would sell the pledged shares in the open market at the prevailing rate. Accordingly the plaintiff sold the pledged shares and has recovered a certain amount which has been adjusted towards the repayment of the inter-corporate deposit. However, there is a balance of Rs.2,99,04,684/- due and payable by the defendant

together with interest, according to the plaintiff.

3. The learned Counsel for Defendant Nos.1 and 3 submits that there is in fact no sale of the pledged shares but the security has been parked in favour of M/s.Sneh Capital, the sub-broker through which the plaintiff has allegedly sold the shares. He submits that the contract notes produced by the plaintiff are not in the proper format as required by the Bombay Stock Exchange. They are signed by the sub-broker instead of the broker as required under the Securities and Exchange Board of India (Stock brokers and sub-brokers) Regulations, 1992. The Permanent Account Number according to the learned Counsel, is not mentioned in some of the contract notes. Furthermore, he submits that there are certain discrepancies in the contract note due to which it is obvious that there has been a parking of securities with Sneh Capital and not a sale of the shares. The learned Counsel then submits that although Defendant No.3 had guaranteed repayment of the inter-corporate deposit. However, there is no continuing guarantee and, therefore, no claim would lie against Defendant No.3.

4. Furthermore, it is submitted that the valid sale of shares was for a negligible amount and therefore, was not of alleged sale.

5. On behalf of Defendant Nos.2 and 4, the learned Counsel submits that Defendant No.4 was not liable if there was any shortfall. He submits that under section 176 of the Contract Act, there was no valid notice issued to Defendant No.4 prior to the alleged sale of the shares and therefore, such a sale is invalid. A further submission is made that Defendant No.2 had not in fact guaranteed repayment of the loan but the document relied on by the plaintiff is an undertaking to furnish a guarantee, which does not tantamount to furnishing a guarantee. According to the learned Counsel, the notes issued by Sneh Capital are bogus documents which cannot be relied on to indicate that the pledged shares have in fact been sold.

6. In my view, the defenses raised by the defendants cannot be countenanced for more than one reason. There are documents on record to indicate that the pledged shares have been sold. The contract notes indicate the rate at which the shares have been sold and the amounts paid to the plaintiff. The plaintiff has given credit for this amount. Admittedly the rate at which these shares were sold was the then prevailing market rate. The only contention of the defendants seems to be that the security has been parked with Sneh Capital and therefore, if the shares are sold at today’s rate, the entire inter-corporate deposit would be repaid. For this, the defendants seek to rely on the discrepancies in the contract notes and submit that they

are not in accordance with the rules, regulations and bye-laws of SEBI. In my view, that is a matter for which if indeed there is any irregularity it is for the SEBI to take action. The fact that the shares have been sold cannot be disputed only on the ground that the sale has been effected through a sub-broker. The submission of Defendant No.4 that he is not liable if there is a shortfall in repayment of the loan cannot be accepted. Defendant No.4 was required to maintain the security, equivalent to 150% of the inter-corporate deposit. Therefore, if the sale of the pledged shares has not resulted in the entire amount of the inter-corporate deposit being wiped off, Defendant No.4 will certainly be liable.

7. The submission made on behalf of Defendant Nos.2 and 3 that there was no guarantee given by the defendants or that it was only an undertaking to give a guarantee is in my opinion incorrect. These defenses raised by the defendants are hypertechnical.

8. However, with a view to give an opportunity to the defendants to defend the suit, the defendants shall deposit in this Court an amount of Rs.1 crore within a period of six weeks from today failing which the plaintiff would be entitled to a decree. The amount shall be deposited jointly and severally by the defendants. If the amount is deposited, the Prothonotary and Senior Master shall invest the same in

a fixed deposit of a nationalised bank initially for a period of three years, to be renewed thereafter.

9. Upon deposit of the amount as aforesaid, the suit to be transferred to the list of commercial causes. Written statement to be filed within four weeks from the date of the deposit. Affidavit, list of documents to be filed within four weeks thereafter. Discovery and inspection be completed within six weeks thereafter.

10. Summons for Judgement is disposed of accordingly.